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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

RICHARD HENRY JOHNSON,

Plaintiff,

Civil No. 10-0005-AA

v.

ORDER

RICK COURSEY, et al.,

Defendants.

AIKEN, District Judge.

Plaintiff, an inmate in the custody of the Oregon Department of Corrections, filed a complaint under 42 U.S.C. sec. 1983 alleging that defendants violated his constitutional rights with respect to a disciplinary sanction issued in July, 2009.

Defendants move to dismiss plaintiff's complaint on the ground that plaintiff did not exhaust administrative remedies. Defendants' Unenumerated 12(B) Motion to Dismiss (#23).

The Declaration of David Powell submitted in support of defendants' motion states that plaintiff did not seek administrative review of the Findings of Fact, Conclusions of Law, and Order giving rise to his claims in this case. Declaration of David Powell (#24) p. 3.


However, the documents submitted by plaintiff indicate that plaintiff sent a "communication" to Inspector General Stan Czerniak requesting administrative review of his disciplinary hearing. Mr. Czerniak acknowledges receiving a "petition (plaintiff) submitted for administrative review of your formal disciplinary hearing." See, Plaintiff's Exhibits #3 and #4.

It may be that defendant is arguing that plaintiff did not properly exhaust his administrative remedies. However, plaintiff's exhibits contradict defendants' assertion that he "did not seek administrative review." I find that the record before the court is ambiguous with respect to the exhaustion issue.

Defendants' Motion to Dismiss (#23) is denied without prejudice.

IT IS SO ORDERED

DATED this 2 day of November, 2010.



Ann Aiken
United States District Judge